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In re Application of :
Wagner et al. :
Application No.: 10/089,519 :
PCT No.: PCT/EP00/09447 :
Int. Filing Date: 27 September 2000 : DECISION
Priority Date: 01 October 1999 :
Attorney's Docket No.: 1860/50907 :
For: DYNAMIC MIXER :

This decision is in response to applicant's "Response to Decision on Petition under 37 C.F.R. 1.181" filed on 24 September 2002.

BACKGROUND

On 27 September 2000, applicant filed international application PCT/EP00/09447 that claimed priority of an earlier German application filed 01 October 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 12 April 2001. A Demand for international preliminary examination, in which the United States was elected, was timely filed. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 01 April 2002.

On 29 March 2002, applicant filed a Transmittal Letter (Form PTO-1390) for entry into the national stage in the United States which was accompanied by, *inter alia*, a translation of the international application and the basic national fee of \$890 as required by 35 U.S.C. 371(c). These papers were assigned application number 10/089,519.

On 27 June 2002, the United States Patent and Trademark Office (USPTO) in its capacity as an Elected Office mailed out a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for providing the oath or declaration later than thirty months from the priority date were required. The Notice set a two month extendable time period for response.

On 09 July 2002, applicant submitted a response which was accompanied by, *inter alia*, a date-stamped postcard receipt, a copy of an application data sheet and a copy of the declaration of the inventors.

On 12 August 2002, the USPTO sent applicant a decision indicating that the postcard receipt submitted by applicant was of such poor quality that a substantial portion was unreadable, and that applicant would need to explain the initials and the date on the postcard. The decision also indicated that the application data sheet filed with the response was not identical to the application data sheet filed with the original filing. Further, the decision indicated that it was not clear that the copy of the declaration filed with the petition was a true copy of the declaration that was filed 29 March 2002.

On 24 September 2002, applicant filed the current response which is accompanied by, *inter alia*, a legible copy of the postcard receipt, an explanation as to how the initials and date got on the postcard receipt and an explanation as to why the application data sheet provided on 09 July 2002 was not identical to that with the original filing.

DISCUSSION

MPEP section 502 states, in part:

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

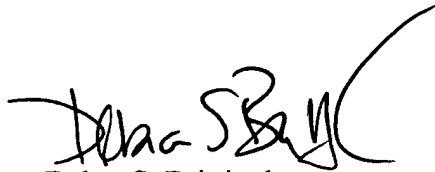
The copy of the postcard receipt filed by applicant indicates that the executed declaration was filed with the initial filing on 29 March 2002. Applicant has indicated that the markings on the postcard receipt were placed on the postcard by attorney who check the filing to make sure all of the documents are included before the application is filed. Further, applicant has indicated that the application data sheet filed on 09 July 2002 was not in fact a true copy but was a draft copy in his file that was not properly marked. However, it is still not clear that the copy of the declaration filed with the petition was a true copy of the declaration that was filed 29 March 2002.

CONCLUSION

The current petition is **DISMISSED**.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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